

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

**To: The Commission**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**CC Docket No. 94-102**

The Rural Telecommunications Group (“RTG”), by its attorneys and pursuant to the Federal Communications Commission’s (“FCC” or “Commission”) Public Notice, DA 98-1504 (rel. July 30, 1998), hereby respectfully submits these comments regarding the Request for Emergency Declaratory Ruling filed July 20, 1998 by the State of California 9-1-1 Program Manager (“California Program Manager”), which seeks rulings on limited liability issues related to the implementation of Phase I wireless enhanced 911 (“E-911”) service. By these comments, RTG advises the Commission that the State of California 9-1-1 Program Manager’s request is likely to be only the first of many similar requests to be made by other state 911 and E-911 programs, and RTG contends that the time-consuming, individualized treatment of similar requests can be avoided if the Commission adopts the

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suggestions for limiting wireless carriers' 911 and E-911 liability made previously by both BellSouth Corporation ("BellSouth") and the Cellular Telecommunications Industry Association ("CTIA").<sup>1</sup>

### **STATEMENT OF INTEREST**

RTG is an organized group of rural telecommunications carriers formed to promote the efforts of its members and similarly-situated telecommunications providers to speed the delivery of new, efficient and innovative telecommunications technologies to the populations of remote and underserved areas of the country. RTG's members are both commercial mobile radio service ("CMRS") licensees and CMRS applicants who have or will have a statutory obligation to forward all 911 calls placed to their systems, regardless of the existence of a contractual relationship between the carrier and the callers. Therefore, RTG is an interested party in any proceeding involving the issue of carrier liability related to the forwarding of 911 and E-911 emergency calls.

### **DISCUSSION**

The California Program Manager asks the Commission to rule on whether carriers have an obligation to deploy wireless Phase I E-911 services even though the State provides no immunity from liability, and if the obligation exists, whether the State is required to reimburse carriers under the cost recovery rules for the cost of the carriers' own insurance policies. RTG maintains that carriers should not be obligated to deploy E-911 without a statutory umbrella of limited liability, and if no means for limiting liability is to be provided, by either the state or the FCC, then carriers must be entitled to reimbursement for insuring themselves.

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<sup>1</sup> See Petitions for Reconsideration filed February 17, 1998 by BellSouth and CTIA in the above-captioned docketed proceeding; Comments of RTG in Support of the Petitions for Reconsideration Filed by BellSouth and CTIA in the above-captioned docketed proceeding, filed March 18, 1998.

The issue of immunity from liability is the sole substantive obstacle to the conducting of trials and commercial deployment of wireless E-911 service in California.

Wireless E-911 service will not be offered in California by all carriers until a limited liability mechanism is in place because most wireless carriers will not sign contracts until such a mechanism is in place. The delay is not the fault of the wireless carriers — in fact, the California Program Manager expressly states that it “would like to make it clear that wireless carriers have worked diligently to resolve the issue and that good faith attempts have been made to seek resolution of the immunity obstacle.”<sup>2</sup> At the moment, California is out hundreds of thousands of dollars in trial investment, and the public is still waiting for wireless E-911 service. This same scenario can be anticipated in other states unless the Commission acts. For example, there is a bill currently pending in the New Mexico legislature that would require all carriers to contribute to a state fund created to finance the implementation and deployment of 911 and E-911 service throughout the state. For wireline contributors, this cost is recoverable; for CMRS carriers, no reimbursement policy exists, nor is one planned. The inequitable and disparate treatment of wireline and wireless carriers in the context of 911 and E-911 compliance is painfully evident. This inequity has only one place to play itself out, and that is in the rates CMRS customers will pay.

As commenters in the above-captioned proceeding have previously recognized, CMRS carriers must not be forced to recoup the costs of implementing E-911 service solely from their customers.<sup>3</sup> The general public, not just CMRS subscribers, benefits from wireless E-911 service. If there are no state or federal provisions for limiting liability for wireless carriers, then the investments

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<sup>2</sup> California Program Manager’s Request for Emergency Declaratory Ruling at 2.

<sup>3</sup> Reply Comments of Airtouch Communications at 4.

that CMRS carriers sink in obtaining their own insurance policies must be recoverable through a state mechanism, "just as wireline 911 services are funded by states through legislation. There is no reason to treat cost recovery differently for wireline and wireless services."<sup>4</sup> Unless the State of California reimburses its wireless carriers for the cost of self-insurance and 911 and E-911 deployment in general, the cost of wireless service to California CMRS subscribers could rise. What is true for California is true for all states.

No wireless carrier should be obligated to commence the provision of E-911 service until the Commission amends Section 20.18 of its rules to require states to limit liability for CMRS providers. Nor should wireless carriers be required to fund implementation and deployment of 911 and E-911 service *until* such costs are reimbursable under a cost recovery rule in every state. In addition, in the case of California, where hundreds of thousands of dollars have already been invested and trials have been completed, the State should be directed to reimburse those carriers who choose to move forward with wireless E-911 service implementation by securing their own insurance policies.

With respect to all the other states that may soon, or are currently, experiencing similar implementation obstacles, the Commission has the ability to remove or avoid these barriers by permitting wireless carriers to file informational tariffs setting forth carriers' terms and conditions for the provision of E-911 service to subscribers and non-subscribers.

As California's experience has demonstrated, wireless carriers are ready and willing to implement E-911 service. They simply cannot afford to do so without imposing inequitable costs on their own subscribers. The Commission has several options it may exercise to prevent a delay in

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<sup>4</sup> Reply Comments and Written Ex Parte Presentation of Ameritech at 6.


wireless E-911 deployment from occurring: (1) amend Section 20.18 of its rules to forbear from imposing E-911 obligations on wireless carriers in states where no limitation on liability exists; (2) require that states reimburse wireless carriers for their costs of obtaining and maintaining individual liability policies, and complying with 911 and E-911 service requirements in general; and (3) permit wireless carriers to file informational tariffs that establish a legal relationship between all 911 and E-911 callers and the carrier.

### CONCLUSION

For the foregoing reasons, RTG respectfully requests that the Commission rule that wireless carriers in California do not have to deploy E-911 service until mechanisms are in place to limit liability, and that the State must reimburse carriers for the cost of obtaining their own insurance policies should they choose to move forward with E-911 service implementation without the benefit of effective state or federal liability limitations.

Respectfully submitted,

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